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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,204	08/22/2003	Frederick James Diggle III	030260	9007

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KIRKPATRICK & LOCKHART LLP
535 SMITHFIELD STREET
PITTSBURGH, PA 15222

EXAMINER

CHAN, KO HUNG

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/646,204	DIGGLE ET AL.	
	Examiner	Art Unit	
	Korie H. Chan	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/22/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 11, line 2, " a support member " is vague in that it is not clear whether it is the same support members recited in claim 7.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

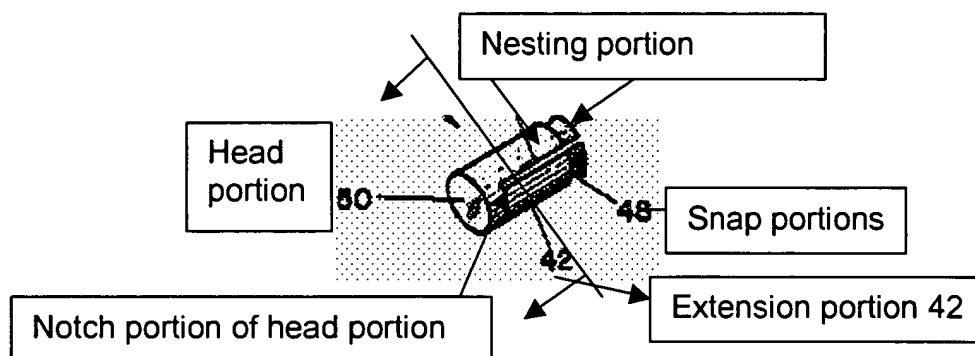
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (US patent no. 4,018,023). Anderson discloses a driving device (figure 4) comprising a driving end (50 plus an upper portion of cylinder with notch end, see division line in illustration below) capable of receiving a blow from a driving tool; an extension portion (42) extending from the driving end, the extended portion adapted to contact a shank of the support device; and a nesting portion (48 note that the there are more than one slit 44 which splices the cylinder 40 into plural leaves, one leave represent a nesting portion while the other leaves represent extension portion) extending from the driving end, the nesting portion adapted to engage a split portion

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(14) of the support device; wherein the head includes a notch (upper end portion of 44); wherein the extension portion includes snap portions (48); and wherein the driving device is made of steel (col. 3, lines 31-35).



Claims 1, 6, 17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Davis (US Patent no. 1,313,795). Davis discloses a driving device (18) made of steel adapted to drive the support device into an object, the driving device comprising a driving end (18) adapted to receive a blow from a driving tool; an extension portion (walls 15) extending from the driving end, the extended portion adapted to contact a shank of the support device; and a nesting portion (17) extending from the driving end, the nesting portion adapted to engage a split portion of the support device.

Claims 1-5 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Odegard (US Patent no. 3,341,651). Odegard discloses a driving device (20) adapted to drive the support device into an object, the driving device comprising a driving end (upper surface of 20) adapted to receive a blow from a driving tool and a

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notch (30) in the driving end; an extension portion (lower portion of 20) extending from the driving end, the extended portion adapted to contact a shank of the support device with snap portions (34, figure 8) at the lower portion of the extension portion; and a nesting portion (18) extending from the driving end, the nesting portion (28a, figure 8) adapted to engage a split portion (48) of the support device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (US Patent no. 1,313,795) in view of Anderson (US patent no. 4,018,023). Davis disclosed all the claimed features of applicant's invention except for snap portions at a lower portion of the extension portion. Anderson teaches a removable fastener head (figure 4) comprising a driving end; an extension portion (42) extending from the driving end, the extended portion adapted to contact a shank of the support device; and wherein the extension portion includes snap portions (48). It would have been obvious to one of ordinary skill in the art to have modify the driving head portion of Davis such that the extension portion are provided with snap portions to further secure the driving head onto the shank as taught by Anderson.

Claims 7-11, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odegaard (US Patent no. 3,341,651) in view of Hartzler et al (US Patent no. 1,798,468). Odegaard discloses a support device (40) having a rigid shank (40), serration (43) at first end of shank for securing the device; a rigid first and second support members (46) at the second end of the shank and a driving device (20) adapted to drive the support device into an object, the driving device comprising a driving end (upper surface of 20) adapted to receive a blow from a driving tool and a notch (30) for receiving the support member; an extension portion (lower portion of 20) extending from the driving end, the extended portion adapted to contact a shank of the support device with snap portions (34, figure 8) at the lower portion of the extension portion; and a nesting portion (18) extending from the driving end, the nesting portion (28a, figure 8) adapted to engage a split portion (48) of the support device. However, Odegaard does not show threads at the first end of the shank. Hartzler teaches providing a shank with threads at its sharpened end portion. It would have been obvious to one of ordinary skill in the art to have modified the serrations of Odegaard such that they are threads as taught by Hartzler. Such modification would have involved a mere substitution of one well-known securing shank end for another.

Claims 7 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (US Patent no. 1,313,795) in view of Hartzler et al (US Patent no. 1,798,468). Davis discloses a support device, comprising a rigid shank (10) having a first end and a second end; barbs disposed at the first end of the shank for use in securing the device to a pole; a rigid first support member (12, 13) disposed on the

second end of the shank for securing a first object to the pole; a rigid second support member (the other 12 and 13) disposed on the second end of the shank for securing a second object to the pole; and a driving device (18) made of steel attached to the second end of the shank and adapted to drive the support device into an object, the driving device comprising a driving end (18) adapted to receive a blow from a driving tool; an extension portion (walls 15) extending from the driving end, the extended portion adapted to contact a shank of the support device; and a nesting portion (17) extending from the driving end, the nesting portion adapted to removably and fixably engage a split portion of the support device. However, Davis does not show threads at the first end of the shank. Davis shows barbs at the first end for securing the device to a pole. Using barbs or threads for securing a gaff onto a surface are known mechanical equivalents. Hartzler teaches providing a shank with threads at its sharpened end portion. It would have been obvious to one of ordinary skill in the art to have modify the barb of Davis such that they are threads as taught by Hartzler. Such modification would have involved a mere substitution of one well-known securing shank end for another.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (US Patent no. 1,313,795) in view of Hartzler et al (US Patent no. 1,798,468) as applied to claim 7 above, and further in view of Anderson (US patent no. 4,018,023). Davis and Hartzler combined disclosed all the claimed features of applicant's invention except for snap portions at a lower portion of the extension portion. Anderson teaches a removable fastener head (figure 4) comprising a driving end; an extension portion (42) extending from the driving end, the extended portion adapted to contact a shank of the

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support device; and wherein the extension portion includes snap portions (48). It would have been obvious to one of ordinary skill in the art to have modify the driving head portion of Davis such that the extension portion are provided with snap portions to further secure the driving head onto the shank as taught by Anderson.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (US Patent no. 1,313,795) in view of Hartzler et al (US Patent no. 1,798,468) as applied to claim 7 above, and further in view of Schmidt (US patent no. 3,848,080) and Muller (US patent no. 2,257,640). Davis and Hartzler combined disclosed all the claimed features of applicant's invention except for the support member is of "P" shape or J-shape. Schmidt teaches providing J-shaped support member (18, figure 2) at a second end of a shank (10) for holding additional wire. Muller teaches providing a support device having "P" shaped or J-shaped (figure 15) support member with a driving device (20). It would have been obvious to one of ordinary skill in the art to have modify the support member of Davis and Hartzler combined such that the support member are "P"-shaped or "J" shaped as taught by Muller for supporting additional wires as taught by Schmidt.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The remaining cited art of record demonstrate gaffs and spikes used in a variety of environments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Korie H. Chan whose telephone number is 703-305-8079. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Korie H. Chan
Primary Examiner
Art Unit 3632

khc
April 28, 2004